

MINUTES

**MONTANA SENATE
58th LEGISLATURE - REGULAR SESSION**

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN DUANE GRIMES**, on March 26, 2003 at
9:00 A.M., in Room 303 Capitol.

ROLL CALL

Members Present:

Sen. Duane Grimes, Chairman (R)
Sen. Dan McGee, Vice Chairman (R)
Sen. Brent R. Cromley (D)
Sen. Aubyn Curtiss (R)
Sen. Jeff Mangan (D)
Sen. Jerry O'Neil (R)
Sen. Gerald Pease (D)
Sen. Gary L. Perry (R)

Members Excused: Sen. Mike Wheat (D)

Members Absent: None.

Staff Present: Valencia Lane, Legislative Branch
Cindy Peterson, Committee Secretary

Please Note. These are summary minutes. Testimony and discussion
are paraphrased and condensed.

Committee Business Summary:

Hearing & Date Posted: HB 733, 3/12/2003; HB 546,
3/12/2003; HB 615, 3/12/2003

HEARING ON HB 733

Sponsor: Rep. Clarice Schrumpf, HD 12, Billings.

Proponents: Rep. Jim Shockley, HD 61, Victor
Gregg Trude, Montana Right to Life
Gilda Clancy, Eagle Forum
Julie Millam, Executive Director,
Montana Family Coalition
Ginny Dodge, Citizen's Network

Opponents: None.

Opening Statement by Sponsor:

Rep. Clarice Schrumpf, HD 12, Billings, brings HB 733 to increase the mandatory minimum sentence from two years to four years for sexual assault on a victim under the age of 16 if the offender is three or more years older than the victim or if the offender inflicts bodily injury upon anyone in course of committing the sexual assault. The intent is to keep pedophiles off the streets, out of our homes, and away from our children. Sixty percent of child rapists are on parole. In researching this bill, **Rep. Schrumpf** found some very disturbing facts that will illustrate the need for HB 733:

1. Almost 95 percent of victims know their perpetrators.
2. The medium age of victims is 13 years.
3. Half of the rape victims in the United States are under the age of 18.
4. Girls are sexually abused three times more than boys.
5. Approximately 13 percent of women in state prison say that they have been sexually abused as children.
6. Ninety-five percent of teenage prostitutes have been sexually abused prior to prostitution.
7. The typical child-sex offender molests an average of 117 children and most of these instances are never reported to law enforcement.

Rep. Schrumpf explained the need for Amendment HB073303.ajm **EXHIBIT (jus64a01)**, which will change the title and provide for an additional penalty for using the internet to facilitate the offense.

Proponents' Testimony:

Rep. Jim Shockley, HD 61, Victor, spoke on behalf of the amendment. **Rep. Shockley** explained that because sexual assault could be a hand on the outside of a sweater on a woman's breast, the wanted to give discretion to the judge if the ages of the victim and the offender were more than three years apart. In discussing this situation with a district court judge, **Rep. Shockley** discovered the judge viewed this penalty to be harsh under certain circumstances.

Gregg Trude, representing Montana Right to Life, was concerned about the number of offenders who were getting minimum sentencing. **Mr. Trude** heard on the radio about a convicted sexual offender who had six previous counts against him and was just picked up and charged with two more. **Mr. Trude** stated this bill's intent is not to convict a 19-year-old man with a 16-year-old girl. The intent is to give strict minimum sentencing guidelines to a man or woman who sexually assaults a young child. **Mr. Trude** testified the statistics are amazing regarding repeat offenders, and he feels part of the problem is that offenders are receiving minimum sentences. **Mr. Trude** has spoken with prosecutors and reported men are luring children out by using the internet. The amendment will, therefore, increase the penalty if the offender uses the internet to perpetrate the crime. **Mr. Trude** submitted Sexual Abuse Statistics from the Department of Justice for the Committee's information, **EXHIBIT(jus64a02)**.

Gilda Clancy, representing Eagle Forum, stated no one knows how many pedophiles exist in America since the overwhelming majority never fulfill their fantasies or come to the attention of law enforcement. They have never been able to maintain a successful interpersonal relationship with others and at some point discover sexual relations with children can be achieved and they feel a sense of fulfillment they cannot obtain anywhere else. Pedophiles can be found at every social and economic level and can be established members of the community. Many have extensive collections of child pornography to feed from. Pedophiles will videotape children from television and school sporting events. After engaging in sexual acts with an adult, a complex set of emotions will engulf the child. These emotions include humiliation, attachment to the offender, and fear of exposure. The victim will become extremely fearful that friends and family will learn of the activity and that he/she will suffer harsh consequences. Pedophiles will use these emotions against the charge. Pornography plays a pivotal role in the child sex offender's life, but most importantly, it is the tool of the trade used to induct his victims into his sexual fantasies. Montana Eagle Forum supports a longer prison sentence for

pedophiles and asked the Committee to reconsider the 20-year sentence which was in the bill originally.

Julie Millam, Executive Director of Montana Family Coalition, supports the bill as pornography and sexual crimes are on the rise. There is a need to protect Montana children at all costs. **Ms. Millam** supports the bill with the amendment.

Ginny Dodge, representing Citizen's Network, supports HB 733 because the crime of pedophilia is comparable to murder. Therefore, the law should provide the severest of penalties for such a sick and evil transgression against a child. **Ms. Dodge** indicated this crime is becoming more and more prevalent in Montana.

Opponents' Testimony: None.

Questions from Committee Members and Responses:

SEN. BRENT CROMLEY asked **Rep. Shockley** if he had seen the amendment with regard to the internet.

Rep. Shockley stated he had not seen the amendment.

Upon inquiry by **SEN. CROMLEY**, **Rep. Schrumpf** stated that she and **Rep. Shockley** had drafted the proposed amendment. **SEN. CROMLEY** was curious as to why sexual assault using the internet would carry such a longer sentence.

Rep. Schrumpf depicted an offender using a hidden tool to lure children in and, therefore, it deserves a more severe penalty.

SEN. CROMLEY noticed the bill does not address repeat offenders and carries the same punishment for repeat offenses, and he wondered if they considered increasing punishment for repeat offenders.

Rep. Schrumpf referred to question to **Rep. Shockley** who responded a lot of the problems which the Legislature tries to address in statute are really judge problems. He feels that if a judge keeps seeing the same offender, the judge should be increasing the sentence toward the maximum allowed under law.

CHAIRMAN GRIMES submitted to the Committee the current definition of "sexual contact" contained in the Code, **EXHIBIT(jus64a03)**.

SEN. DAN MCGEE stated under current law the minimum incarceration period is two years, the bill as originally drafted asked for twenty years, and was amended by the House to four years. **SEN.**

McGEE asked **Rep. Shockley** why the bill was amended to four years as the maximum sentence.

Rep. Shockley simply responded it came in at twenty and went out at four. When he initially spoke, he believed the Committee did not fully understand. If you have a 19-year and one-month old male and a female who is exactly 16, the male will get a maximum of four years. **Rep. Shockley** suggested that would be an unintended consequence if the male got the maximum under that scenario, although he agrees twenty years for an egregious offense would be appropriate.

SEN. JEFF MANGAN asked **Rep. Schrumpf** if it was her intent for the amendment to fall in line with the intent of the testimony that the victim be under the age of 16 and the perpetrator being three years older, or if it was the intent for the amendment to apply in any situation.

Rep. Schrumpf responded the amendment was intended for younger aged people.

SEN. MANGAN asked **Rep. Schrumpf** would be amenable to clarifying that in the amendment.

Rep. Schrumpf agreed to that clarification.

SEN. GARY PERRY stated the bill deals with Section 45-5-5-02 and deals with sexual assault only.

(Tape : 1; Side : B)

SEN. PERRY stated in the very next section after sexual assault is sexual intercourse without consent and asked if they considered changing that section as well.

Rep. Schrumpf said she would consider changing that section.

SEN. PERRY noted the bill increases the penalty for sexual assault beyond the penalty for sexual intercourse without consent.

Closing by Sponsor:

Rep. Schrumpf closed stating she will do whatever she can to protect every child in the state from having to suffer the anguish of these crimes. She knows measures such as this will help ensure the state acts responsibly. Children who are sexually abused have severe emotional and behavior problems for the rest of their lives, along with many other behaviors such as

eating disorders, self-mutilation and, sadly enough, can become sexual abusers themselves. In some cases, the internet is used as weapon in a premeditated and deceptive manner. This is an opportunity to protect children.

HEARING ON HB 546

Sponsor: Rep. Pat Wagman, HD 26, Livingston.

Proponents: Rep. John Parker, HD 45, Great Falls

Opponents: None.

Opening Statement by Sponsor:

Rep. Pat Wagman, HD 26, Livingston, explained the bill is aimed at parents who are self-employed and do not receive a paycheck which can be garnished by the court to obtain child support payments. When these self-employed parents are taken to civil court, the court cannot collect payment. Current law allows two years to collect back child support. HB 546 will enable county attorneys to work with offenders to require payment of child support. **Rep. Wagman** explained that he spoke with a woman about child support and in checking into her situation, he discovered that if child support is due from a self-employed spouse, judgments are very difficult to collect on because income is hidden. Therefore, the judge does not have an ability to force people to make payments. The woman who **Rep. Wagman** spoke with was owed \$30,000 in back child support and worked two and three jobs and raised three children. Because she worked, she was not eligible for state assistance. **Rep. Wagman** has been contacted by other parents in the same situation. The House amended the bill so that all but two of the ten years are suspended, and the person must remain on probation for the remainder of the sentence. This will put a leash on a self-employed spouse and keep them working.

Proponents' Testimony:

Rep. John Parker, HD 45, Great Falls, is a Deputy County Attorney in Cascade County and has prosecuted a good number of these cases. This bill fills an important need because even after obtaining a conviction, a two-year time horizon to collect child support means you can win the battle but lose the war. Extending this time frame will enable law enforcement to do more to help single parents who are not getting paid.

Opponents' Testimony: None.**Questions from Committee Members and Responses:**

Upon question from **SEN. McGEE**, **Rep. Parker** stated there would not be a mandatory minimum, but there would be a mandatory maximum of two years in prison. In other words, there would be an eight year sentence, only two of which could initially be served in prison. From a practical standpoint, nobody wants to put these offenders in jail, but rather would like them out working.

SEN. McGEE asked how probable it would be for a person to take prison time rather than paying their back due child support.

Rep. Parker only knew of one case that went that way. There is usually a detailed negotiation process before charges are filed. Many times an agreement can be reached without actually filing charges. By the time it is necessary to file charges, it is usually apparent there is some bad actor-type conduct.

SEN. JERRY O'NEIL asked how many people **Rep. Parker** had put in children for failing to pay child support.

Rep. Parker responded he had only sent one person to prison on this charge and it is the only MSP conviction in the state of Montana. That case has actually been reversed by the Montana Supreme Court. This person was sentenced to prison for the entire two years.

SEN. PERRY inquired what the purpose is of court-ordered support.

Rep. Parker portrayed two tracks. The first is a civil track where the district court judge finds there is an obligation, reviews the statutory factors about the ability to pay, and determines what the monthly payment would be. There are civil remedies in terms of saying if someone does not pay, they can be held for contempt of court and possibly go to jail for a day or two. Second, there is a criminal track with an underlying felony non-support statute that **Rep. Wagman** seeks to amend. The Legislature put that statute in place because civil remedies often do not provide an adequate incentive to persuade people to fulfill their obligation to their kids.

SEN. PERRY again inquired what the purpose is of court-ordered support. Specifically, **SEN. PERRY** wanted to know what the objective is.

Rep. Parker replied the objective is to provide support for the children.

SEN. PERRY expressed if the state puts the payer in prison, what support will be provided to meet the objective.

Rep. Parker felt **SEN. PERRY** hit the nail on the head and stated it is the objective of his office, in prosecuting these cases, to put a hammer over someone's head and tell them to go out in the community and earn the money or else they will go to prison.

Rep. Parker does not feel it is the intention of any prosecutor to utilize prison as an immediate remedy.

SEN. PERRY asked if they are assuming the person has a job and can provide support.

Rep. Parker indicated that is an important point. By the time there is a criminal prosecution, the district court judge has already found the individual had an ability to pay. There is also another measure of protection built in for the person being charged with this crime. In order to win at trial, they have to prove beyond a reasonable doubt that the person had an ability to pay. Many times, an offender will impoverish themselves, and would rather run themselves into the dirt so it will look like they do not have an ability to help their kids.

SEN. PERRY asked if it was possible to utilize electronic incarceration as an alternative to prison and still achieve the objective while keeping the costs of incarceration down.

Rep. Parker preferred to keep the bill as it is. Rep. Parker has prosecuted approximately 50 of these cases and only one individual has been sent to prison. What will make this statute work is the threat of prison. Without that threat to motivate an offender, the statute will lose its effectiveness.

CHAIRMAN GRIMES stated the additional eight years of probation will allow them to keep strings on the offender.

Rep. Parker added that not only is there a length of time during which a person could potentially be sent to prison, but the probation function will also be helpful. When a person is on probation, they should not be drinking or gambling which prevents the individual from squandering away money that could otherwise be used for support.

CHAIRMAN GRIMES asked for clarification about the two-year window.

Rep. Parker explained this is the existing maximum penalty. There is a paradox in current law that provides if an individual does not have a prior felony conviction, they could get up to a

six-year deferred sentence. If they do have a prior felony, they cannot get a deferred sentence, so all they can get is two years. Under current law, the state has a better ability to keep a handle on someone who has not had a prior felony. This bill will help to correct that injustice. In terms of how far back they can go, there is a question about that. A prosecutor can only start charging a case at the point at which the law became a felony.

CHAIRMAN GRIMES asked if passing HB 546 would result in going back and opening old cases since they have new tools.

Rep. Parker surmised it would not result in any new prosecutions in his office.

SEN. O'NEIL asked if **Rep. Parker** had prosecuted 40 to 50 cases and only sent one offender to prison under current law, why the law would need to be changed.

Rep. Parker reported the law is only working up to a point. Most of the cases can be resolved without getting a felony conviction and the case will be dismissed in exchange for an agreement to pay. The problem arises when an individual owes \$30,000 or \$40,000 and there is only a two-year window within which they can require them to pay. There is no reasonable way a person can pay that amount of money in that short a period of time. By extending the time, there is a much better change of collecting the money.

SEN. O'NEIL asked **Rep. Parker** if he feels he has successfully prosecuted those 40 or 50 cases.

Rep. Parker has been as successful as could, but feels he could do more if HB 546 is passed.

CHAIRMAN GRIMES asked if on page 2, lines 20 and 21, and the reference to the security deposit. This is not in the title of the bill and **CHAIRMAN GRIMES** wondered if this was an oversight and whether it was mentioned by the House Judiciary.

Rep. Wagman stated this came from the bill drafter, and there were no questions about this from the House Judiciary.

Closing by Sponsor:

Rep. Wagman asked the Committee to look at the fiscal note and stated the bill will have a long-range impact to the Department of Corrections and will probably cause at least one offender within the next few years to be sentenced to prison. This bill

will deal with those chronic offenders who feel like they have no responsibility to make child support payments despite court orders to pay. **Rep. Wagman** submitted a letter from the Park County Attorney as **EXHIBIT(jus64a04)**.

(Tape : 2; Side : A)

HEARING ON HB 615

Sponsor: Rep. Eve Franklin, HD 42, Great Falls.

Proponents: Morgan Sheets, Montana NARAL
Wayne Riley, Security Coordinator,
InterMountain Planned Parenthood
Sami Butler, Montana Nurses's Association
Jeri Duran, Director of Public Affairs,
InterMountain Planned Parenthood
Jean Braden, Director of Patient Services,
InterMountain Planned Parenthood
Brittney Morris, Clinic Manager,
Great Falls Planned Parenthood
Caren Womble, Montana Women's Lobby
Tracy Clark, Grassroots Organizer,
Intermountain Planned Parenthood
Kathleen Wehri, InterMountain Planned Parenthood
Maggie Fallang, InterMountain Planned Parenthood

Opponents: Lani Candelora, Montana Catholic Conference
Gilda Clancy, Eagle Forum
Julie Millam, Executive Director
of Montana Family Coalition
Marilyn Hatch, Self
Jonathan Martin, Self
Jenny Dodge, Citizens' Network
Kandi Matthew-Jenkins, Self
Gregg Trude, Executive Director,
Montana Right to Life
Terri Paske, Self
Mary P. Krug, Self
William H. Krug, Self

Opening Statement by Sponsor:

Rep. Eve Franklin, HD 42, Great Falls, came before the Committee with HB 615, which is being called the "bubble buffer bill."

Rep. Franklin framed the bill for the Committee explaining the bill will provide a 36-foot buffer zone around health care

facilities. Individuals who are engaged in lawful protest demonstration may not approach the facility within that 36-foot zone. In addition, the bill will provide an 8-foot bubble around patients as they come and go to the health care facility. There are penalties in the bill for violating the buffer zone. The bill focuses on health care facilities which provide reproductive health care. This reproductive health care could include pap smears, contraceptive information and health care, fertility and infertility counseling, and abortion. **Rep. Franklin** made it clear that "reproductive health care" as used in the bill, is not a euphemism for "abortion." Women's reproductive health care runs a full gamut of health care services. **Rep. Franklin** is aware that this is a heart-felt issue by many individuals, and that is why this bill is necessary. In the course of legal, constitutionally-protected demonstrations, people's feelings run high. **Rep. Franklin** demonstrated a roll-playing scenario of a person coming into a clinic for health care services, which may or may not have anything to do with an abortion, and people demonstrating at the facility, who have very strong feelings about people entering the facility. **Rep. Franklin's** point was there is an interaction which can occur which can escalate. HB 615 will not prohibit protesting in any way. It will require a protestor to keep a safe distance because people must be allowed unfettered access into health care facilities. Planned Parenthood in Billings offers abortions, but Planned Parenthood in Great Falls does not. Those two facilities serve people who will typically use the facility because they do not have a private physician. Many people of modest income or young people will use Planned Parenthood because it has a sliding scale. **Rep. Franklin** feels young women are more vulnerable to not seeking health care if they know there is a possibility of conflict or interaction with protestors. **Rep. Franklin** opined we would not want to discourage people from seeking health care. In summary, the bill will provide a buffer zone between protestors and patients so each can proceed upon their constitutionally-protected activities of seeking health care and freedom of speech.

Proponents' Testimony:

Morgan Sheets, representing Montana NARAL, stated they encourage their members to be active and vocal about their views. Therefore, **Ms. Sheets** understands the importance of freedom of speech. **Ms. Sheets** submitted written testimony as a proponent of HB 615, **EXHIBIT(jus64a05)**, and a summary of the legal precedent established throughout the country supporting safety zones, **EXHIBIT(jus64a06)**.

Wayne Riley, the Security Coordinator for all Planned Parenthood Facilities in Montana, feels the reasons protestors and demonstrators are participating in that activity is really of no consequence as it regards this bill. It is a simple, easy to enforce bill that gives a certain level of protective distance between people with different opinions. This bill points directly to public safety and personal security, and the bill will pass constitutional muster because it in no way impedes or interferes with anyone's ability to protest.

Sami Butler, representing the Montana Nurses's Association, explained her organization does not take a position on abortion. They are, however, committed to improving access to health care. Therefore, they support public policies that remove barriers that deny access to appropriate, qualified health care providers. HB 615 clearly prevents obstruction to health care services access and is consistent with their commitment to support personal health care decisions and individual privacy.

Jeri Duran, Director of Public Affairs, for InterMountain Planned Parenthood, submitted written testimony in support of HB 615, **EXHIBIT(jus64a07)**.

Jean Braden, Director of Patient Services for InterMountain Planned Parenthood, submitted written testimony in support of HB 615, **EXHIBIT(jus64a08)**.

Brittney Morris, Clinic Manager of the Great Falls Planned Parenthood, submitted written testimony in support of HB 615, **EXHIBIT(jus64a09)**.

(Tape : 2; Side : B)

Caren Womble, testified on behalf of the Montana Women's Lobby, feels the 36-foot is not too much to ask for and does not feel this safety zone will infringe upon a person's right to free speech as confirmed by the Supreme Court. **Ms. Womble** pointed out that political candidates must also adhere to laws regarding distribution of literature near polling places. The bill will simply move protestors away from the clinic door, patients, and staff. In **Ms. Womble's** opinion, this bill is about law and order and public health and public safety, individual liberty, and civil rights.

Tracy Clark, the Grassroots Organizer for InterMountain Planned Parenthood, asked the Committee to support HB 615 because it is a responsible balance between patient safety and clinic access and First Amendment rights.

Kathleen Wehri, an employee of Planned Parenthood for 16 years, asked the Committee to support HB 615.

Maggie Fallang, an employee of Planned Parenthood for 12 years, asked the Committee to support HB 615.

Opponents' Testimony:

Lani Candelora, representing Montana Catholic Conference, admitted a like statute has been upheld by the United States Supreme Court. However, she feels Montana interprets its Constitution more broadly than the national Constitution. An example of that is Montana's Right to Privacy. **Ms. Candelora** submitted written testimony in opposition to HB 615, **EXHIBIT(jus64a10)**.

Gilda Clancy, representing Eagle Forum, feels the bill reaches further than women's health care. A person convicted under this section will be fined an amount not to exceed \$1,000 or be imprisoned for a term not to exceed six months, or both. **Ms. Clancy** believes this is excessive punishment. The commission of the offense includes, but is not limited to, knowingly approaching within eight feet of a person who is entering or leaving a facility to give the person written or oral information. **Ms. Clancy** feels a person should have the right to be educated before entering the clinic. This information could be the deciding factor in whether the young woman will keep her child. **Ms. Clancy** does not feel a person should be fined or imprisoned for saving a life. There is no way written material can be directly handed over to a person entering the clinic if the eight-foot rule applies. **Ms. Clancy** read from a leaflet often distributed in front of clinics entitled "What They Won't Tell You at the Abortion Clinic--What They Didn't Tell Me." The author of this leaflet elucidated that abortion is not safe and can cause life-threatening injuries and emotional scars. **Ms. Clancy** describe in detail the methods used in performing abortions.

Julie Millam, Executive Director of Montana Family Coalition, opposes this attempt to put a gag order on abortion protestors. **Ms. Millam** submitted written testimony in opposition to HB 615, **EXHIBIT(jus64a11)**, and an internet article entitled "ACLU backs abortion protestor cited for graphic poster, **EXHIBIT(jus64a12)**".

Marilyn Hatch, a resident of Lolo, submitted written testimony in opposition to HB 615, **EXHIBIT(jus64a13)**.

(Tape : 3; Side : A)

Jonathan Martin, a resident of Great Falls, is grieved greatly by being called violent by people who do not know what he does to help people. **Mr. Martin** submitted written testimony in opposition to HB 615, **EXHIBIT(jus64a14)**.

Jenny Dodge, representing Citizens' Network, feels HB 615 violates the constitutional right to freedom of assembly. The Constitution guarantees that right without consideration of keeping a "bubble." **Ms. Dodge** submitted written testimony in opposition to HB 615, **EXHIBIT(jus64a15)**. **Ms. Dodge** added that the other testimony in opposition to the bill was very descriptive of the evil practice of abortion, and it is no wonder Montanans assemble to protest such a heinous act.

Kandi Matthew-Jenkins, a resident of Missoula, submitted written testimony in opposition to HB 615, **EXHIBIT(jus64a16)**.

Gregg Trude, Executive Director of Montana Right to Life, stated there is a website called "badbills.com". **Mr. Trude** feels this bill should be at the top of that list.

Terri Paske, a concerned citizen, testified that her husband is 100 percent disabled from the Gulf War and, although **Ms. Paske** does not approve of the protests, she approves of their right to protest. She feels an individual should be able to stand up and say when they believe something is wrong and is concerned that this right would be limited.

Mary P. Krug, a resident of Lewistown, submitted written testimony in opposition to HB 615, **EXHIBIT(jus64a17)**.

William H. Krug, a resident of Lewistown, submitted written testimony in opposition to HB 615, **EXHIBIT(jus64a18)**.

Questions from Committee Members and Responses:

SEN. CROMLEY asked **Rep. Franklin** for a factual background regarding what protesters are currently allowed to do.

Rep. Franklin stated she would like to refer that question to **Mr. Riley**.

SEN. CROMLEY first continued by asking about page 1, line 24, where it references a person not consenting.

Rep. Franklin replied that backing away or asking an individual to get away is in the negative and would be indicative of lack of

consent. A person could even just tell a protestor that they are not interested.

SEN. CROMLEY wondered if the bill would have an unintended consequence by restricting striking health care workers.

Rep. Franklin did not see that as being particularly negative. As a dues paying member of a nursing professional organization, she has done informational picketing. Her recollection was that she was 36 feet from the door and there would have been no reason for her to approach an administrator closer than 8 feet to get her message across.

SEN. CROMLEY wondered about the meaning of line 23 and the punctuation used in that sentence. He wondered if "about a health issue" modifies all of the five ways a person could present information.

Rep. Franklin believed that to be an editing decision by Legislative Council. Her feeling is it will be about health care because of the issue. She feels it does not matter what the nature of the information is, as long as it is presented more than 8 feet away.

SEN. CROMLEY reads that displaying a sign presenting information is not modified by "about a health issue" and asked if this was **Rep. Franklin's** intent.

Rep. Franklin explained her intent as being an individual passing out any sort of information to patients going into a health care facility cannot approach them within eight feet without their consent. The content is less of an issue, because the point is the action.

SEN. CROMLEY restated the intent that a Jehovah's Witness could not pass out pamphlets near a health care facility, but could in another area of town.

Rep. Franklin agreed with that analogy.

In answering **SEN. CROMLEY'S** question about what protesters are currently allowed to do, **Mr. Riley** explained protesters and demonstrators of any kind are limited to public access areas outside the private property owned by health care facilities. If they are outside the private ownership of property in a public access area, provided they do not block ingress or egress to that facility, they are allowed to be in those public access areas only.

SEN. CROMLEY asked if a protester is on the sidewalk in front of the facility and people approach them to go into the health care facility, would they be violating the provision in the bill.

Mr. Riley explained the sidewalk is outside the bubble area and it is public access area. The bill only addresses from the door of the clinic 36 feet out. Once the patient has entered that 36-foot area, the 8-foot cushion would apply.

SEN. PERRY depicted two health care facility situations: public and private. **SEN. PERRY** understood in the case of a private health care facility, the bill would not apply.

Mr. Riley corrected **SEN. PERRY** stating it would apply to anyone who engages in protest or demonstration activity outside of any health care provider, public or private.

SEN. PERRY asked if protesters were banned from the private property anyway.

Mr. Riley held that private property is a trespass rule that has nothing to do with health care and it is a private property issue. Anyone who engages in protest, must receive permission from property owners to come on the property. If they have the property owner's permission, they can be there without question.

Since there are already laws dealing with assault in 45-5-223(3) and intimidation in 45-5-203, and malicious intimidation or harassment in 45-5-21, **SEN. PERRY** suggested video recording the actions of protesters and prosecuting under one of these existing statutes.

Mr. Riley agreed and they have begun doing this. However, it is very expensive.

SEN. PERRY recanted there are laws already in place to address the circumstances described by proponents' testimony.

Mr. Riley stated there are laws to prohibit people from trespassing in the real world. He suggested that if **SEN. PERRY** were to watch some of these videos, he would find it does not always apply, and people who are passionate about what they are protesting are not precluded from violating a minor misdemeanor trespassing law.

SEN. PERRY read the language defining assault and asked if that, coupled with the laws on intimidation, and the ability to videotape, provides adequate laws to take care of this issue.

Mr. Riley replied on the surface, the laws would appear to be sufficient.

SEN. MANGAN needed **Rep. Franklin** to discuss the balance of rights such as the right to privacy and the freedom of speech and how that balance is addressed by HB 615.

Rep. Franklin conveyed again the intention of the bill is not to limit protest, but to provide a buffer zone so patients can enter a health care facility unfettered. Current laws will prevent people from going on private property, but this provision will provide that if a public sidewalk is 36 feet from the entrance of a facility, the protesters will have to back up. Sometimes people are approached as they are walking from their cars to the clinic and are approached. This is where the eight-foot rule will apply. The law needs to provide a corridor to protect these people as they pass through public and private property. Protesters have a right to voice their message; patients have a right to enter healthcare facilities; the balance is the message has to be delivered from eight feet away. This will not impose an undue burden on people trying to get their message across.

SEN. MANGAN then asked if the patient enjoys a right to privacy.

Rep. Franklin portrayed that right of privacy as the other critical issue and a lot of the motivation behind the bill. This will balance not only constitutional rights to freedom of speech but people's privacy rights in seeking their own healthcare. People do not necessarily want to discuss the reason they are going to the doctor.

SEN. MANGAN requested statistics regarding when law enforcement has been called to healthcare facilities and the results of having law enforcement being on the scene.

Mr. Riley indicated there have been a dozen arrests in Billings and Great Falls and of those there have been two cases where a spouse was involved.

SEN. McGEE asked **Rep. Franklin** to show him how far eight feet is without pacing it off.

Rep. Franklin understood **SEN. McGEE's** point, but has full faith that people engaged in protesting will discover a way to judge what eight feet is.

SEN. McGEE stated he could walk within eight feet of **Rep. Franklin** and then walk within nine feet, but wondered if she would know the difference.

Rep. Franklin felt **SEN. McGEE's** statement presumes patients will spend a lot of energy trying to decide how many feet people are away from them. The purpose of the bill is to allow patients to not feel intimidated. If the buffer is allowed, there will not be an issue.

SEN. McGEE understands the intent of the bill, but the language of the bill calls for an eight-foot barrier, and he wonders how a person is supposed to know how to judge eight feet.

Rep. Franklin again stated she understood the point, but remarked other states have not had difficulties enforcing the eight-foot barrier. The practical reality is that people will be excellent judges of eight feet in the course of their activities.

SEN. McGEE is a surveyor by trade and can determine an eight-foot distance quickly. **SEN. McGEE** needed to know what evidence law enforcement will have to make an arrest other than a person's testimony that the protester was within eight feet.

Rep. Franklin challenged that assault is defined and interpreted differently as well. This is the reality of the business of the legal system that has to sort out these matters.

SEN. CROMLEY knows protests can get out of hand and in Billings they just experienced a teachers' strike. He wondered if it would make sense to enlarge the scope of the bill to include not only health facilities, but schools as well.

Rep. Franklin replied that was not her intent, but if the Committee wanted to entertain that amendment, her only objection would be that she believes the bill would have to be reheard.

SEN. CROMLEY asked for the citation in the legal precedent referred to in Exhibit 5 submitted by Morgan Sheets.

Rep. Franklin stated the bill is narrowly drawn because at this point in time, women must be allowed to access safe health care

CHAIRMAN GRIMES asked about line 21 of the bill and wondered where else the words "but not limited to" would apply.

Rep. Franklin felt spitting could be an issue but thinks there is wisdom to drawing the language as narrowly as possible. **Rep. Franklin** conceded that she understood **CHAIRMAN GRIMES'** point.

Closing by Sponsor:

Rep. Franklin felt there was a great deal of testimony from the opposition that had absolutely nothing to do with the bill or the motivation behind the bill. In the real world, women and men are accessing reproductive healthcare in a few facilities that are highly public. Some of these clinics have been the subject of fire bombs and arson. Not all protesters are violent, but there is no way to control all the protesters. The bill will create a corridor for individuals seeking health care and will afford them protection from those individuals who are protesting. The reality is these patients have a right to privacy. Not everyone wants to discuss their personal experiences. It is not too much to ask for someone to respect eight-feet of privacy. The title sounds dispassionate for such a sensitive issue. It is just as much that person's right to have someone not "counsel" them, as it is for the protesters to have a full and vibrant public protest on behalf of their own issue. Counseling is a private matter that involves the trust of two people. While a person is walking into a clinic is not the best place to expect people to be receptive to counseling. The feedback the clinics are receiving from their patients regarding the protesters is usually negative. The bottom line of the bill is the balance between constitutionally-protected freedom of speech and the constitutional right to privacy on the part of the patient. The laws on stalking and assault are too escalated to address this situation. The idea behind the bill is not to punish someone, but prevent aggressive activity.

ADJOURNMENT

Adjournment: 12:05 P.M.

SEN. DUANE GRIMES, Chairman

CINDY PETERSON, Secretary

DG/CP

EXHIBIT (jus64aad)